

Senate, No. 2031

[Senate, April 13, 2009— New draft from the committee on State Administration and Regulatory Oversight on Senate, No. 7 and House, No. 103]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT TRANSFERRING COUNTY SHERIFFS TO THE COMMONWEALTH

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 SECTION 1. Section 17 of chapter 37 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by striking out the second sentence of the second paragraph
3 and the third paragraph and inserting in place thereof the following paragraph:-

4 The salary of the sheriff of Dukes County shall be a sum equivalent to 75 per cent of the
5 salary of an associate justice of the superior court. The salary of a sheriff who does not operate
6 a correctional facility shall be equivalent to 55 per cent of the salary of an associate justice of
7 the superior court.

SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 11, 12 and 13 and inserting in place thereof the following 2 sections:-

Section 11. Except for Barnstable and Suffolk counties, there shall be established upon the books of each county of a transferred sheriff, the government of which county has not been abolished by chapter 34B or other law, a separate fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.

Notwithstanding any general or special law to the contrary, except for Barnstable and Suffolk counties, on the first day of each month, 10.625 per cent of the taxes collected in the county of a transferred sheriff under this chapter shall be transmitted to the Deeds Excise Fund for each county. The remaining percentage of taxes collected under this chapter, including all taxes collected under this chapter in Barnstable and Suffolk counties, and all counties the government of which has been abolished by chapter 34B or other law, but not including the additional excise authorized by section 2 of chapter 163 of the acts of 1988, shall be transmitted to and retained by the General Fund of the commonwealth in accordance with section 10.

Section 12. (a) There shall be within the executive office for administration and finance a county government finance review board, in this section called the "board", consisting of the secretary of administration and finance or his designee, the commissioner of revenue or his designee, and the state auditor or his designee. The secretary of administration and finance or his designee shall serve as chairperson of the board.

(b) Notwithstanding any general or special law or county charter to the contrary, the annual or supplementary budget of a county shall not take effect until reviewed and approved by the board. Except for Barnstable and Suffolk counties, the board shall not approve a budget of a county unless it is satisfied:

31 (1) that the estimates of revenue are reasonable and that adequate funding has been
32 provided for all necessary county expenditures;

33 (2) that of the amounts deposited in the Deeds Excise Fund for each county from
34 revenues derived under this chapter , (i) not more than 60 per cent of the deposits shall be
35 disbursed and expended for meeting the costs of the operation and maintenance of the county;
36 and (ii) not less than 40 per cent shall be disbursed and expended for the automation,
37 modernization and operation of the registries of deeds; and

38 (3) that with respect to funds appropriated for the purpose designated in subclause (ii) of
39 clause (2) and which are not dedicated to the Deeds Excise Fund in each county under section
40 11, the submitted proposed budget shall provide a continuing amount of expenditure of not less
41 than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.

42 In the case of Barnstable County, the board shall not approve a budget unless it is
43 satisfied that the estimates of revenue are reasonable and that adequate funding has been
44 provided for all necessary county expenditures.

45 (c) If a proposed budget is disapproved by the board, the county commissioners or any
46 successor body shall, with the approval of the county advisory board, if applicable, and within
47 30 days of notification of disapproval of the proposed budget, resubmit a revised proposed
48 budget to the board, which addresses the board's concerns.

49 (d) The board shall develop guidelines for implementing this section.

50 SECTION 3. Notwithstanding any general or special law to the contrary, the offices of
51 the Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk county sheriffs, in
52 this act referred to as "office of a transferred sheriff" or "transferred sheriff," are hereby
53 transferred to the commonwealth as provided in this act.

54 SECTION 4. Notwithstanding any general or special law to the contrary, all functions,
55 duties and responsibilities of the office of a transferred sheriff pursuant to this act including, but
56 not limited to, the operation and management of the county jail and house of correction, and any
57 other statutorily authorized functions of that office, are hereby transferred from the county to the
58 commonwealth on the effective date of this act.

59 SECTION 5. Notwithstanding any general or special law to the contrary, the
60 government of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties,
61 except the office of county sheriff, shall retain all existing authority, functions and activities as
62 of the effective date of this act for all purposes, including, but not limited to, the purposes
63 established pursuant to chapters 34, 34A, 35 and 36 of the General Laws or as otherwise
64 authorized by this act. This act shall not affect the existing county boundaries.

65 SECTION 6. All valid liabilities and debts of the office of a transferred sheriff which are
66 in force on the effective date of this act shall be obligations of the commonwealth as of that
67 date, except as may be otherwise provided in this act. All assets of the offices of a transferred
68 sheriff as of the effective date of this act shall become assets of the commonwealth, except as
69 otherwise provided in this act.

70 SECTION 7. (a) Notwithstanding any general or special law to the contrary, all rights,
71 title and interest in real and personal property, including those real properties improved upon
72 through construction overseen by the division of capital asset management and maintenance and
73 paid with commonwealth funds, which are controlled by the office of a transferred sheriff on the
74 effective date of this act, including without limitation, all correctional facilities and other
75 buildings and improvements, the land on which they are situated, and any fixtures, wind
76 turbines, antennas, communication towers and associated structures and other communication

77 devices located thereon or appurtenant thereto, shall be transferred to the commonwealth,
78 except as otherwise provided in this act. This transfer of all buildings, lands, facilities, fixtures
79 and improvements shall be subject to chapter 7 of the General Laws and the jurisdiction of the
80 commissioner of capital asset management and maintenance as provided therein, except as
81 otherwise provided in this act.

82 (b) If a transferred sheriff occupies part of a building or structure owned by a county, the
83 county shall lease that part of the building or structure to the commonwealth under reasonable
84 terms determined by the commissioner of the capital asset management and maintenance.

85 (c) The transfer under this section shall be effective and shall bind all persons, with or
86 without notice, without any further action or documentation. Without derogating from the
87 foregoing, the commissioner of capital asset management and maintenance may, from time to
88 time, execute and record and file for registration with any registry of deeds or the land court, a
89 certificate confirming the commonwealth's ownership of any interest in real property formerly
90 controlled by the office of a transferred sheriff pursuant to this section.

91 SECTION 8. This section shall apply only after the commonwealth has refinanced any
92 outstanding bonds of the Plymouth County Correctional Facility Corporation . That corporation
93 shall be dissolved and its assets transferred to the commonwealth. The criminal detention
94 facility constructed under chapter 425 of the acts of 1991 shall be transferred to the
95 commonwealth. The revenue held by the corporation in the Repair and Replacement and Capital
96 Improvement Accounts shall be transferred to the Plymouth Sheriff's Facility Maintenance
97 Trust Account. The Plymouth Sheriff shall make expenditures from this account only for the
98 maintenance, repair and replacement of the sheriff's facilities.

99 SECTION 9. All leases and contracts of the office of a transferred sheriff which are in
100 force on the effective date of this act shall be obligations of the commonwealth, and the
101 commonwealth shall have authority to exercise all rights and enjoy all interests conferred upon
102 the county by those leases and contracts except as may be otherwise provided in this act.

103 SECTION 10. Notwithstanding any general or special law to the contrary, beginning in
104 fiscal year 2010 and thereafter until terminated, Barnstable, Bristol, Dukes, Nantucket, Norfolk,
105 and Plymouth counties shall appropriate and pay to their respective county retirement Boards,
106 and any other entities due payments, amounts equal to the minimum obligations to fund from
107 their own revenues in fiscal year 2009 the operations of the office of the sheriff for the purpose
108 of covering the unfunded county pension liabilities and other benefit liabilities of the retired
109 sheriff's office employees that remain in the county retirement systems, as determined by the
110 actuary of the public employee retirement administration commission. The state treasurer, under
111 section 20 of chapter 59 of the General Laws, shall assess the city of Boston and remit to the
112 State-Boston retirement system an amount equal to the minimum obligation of Suffolk county
113 to fund from its own revenues in fiscal year 2009 the operations of the office of the sheriff. The
114 secretary of administration and finance shall establish a plan for county governments to pay off
115 these unfunded county pension liabilities and shall establish an amortization schedule to
116 accomplish this task. These payments shall remain in effect for the duration of that amortization
117 schedule, which shall not exceed the funding schedule established by the respective county
118 retirement board. In the case of any such county, when the county has paid such unfunded
119 pension liabilities in full, or the county has completed the amortization schedule as established
120 under this section, whichever occurs first, the county's obligation to make payments of its

121 minimum obligations to fund its sheriff's office operations, as determined under this section,
122 shall terminate.

123 In fiscal year 2010 and succeeding years, if the amount that represents 31.875 per cent of
124 deeds excise collections in any county exceeds the cost of the operation of the office of the
125 sheriff including health insurance and retirement costs, such county shall provide sufficient
126 deeds excise revenue to the Commonwealth to fund those costs as identified by the general
127 appropriations act of that fiscal year. Any deeds excise revenue of the 31.875 per cent collected
128 by a county that is in excess of the costs of operations of the office of the Sheriff as identified in
129 the annual state budget shall remain with the county's deeds excise fund to fund obligations of
130 the county under section 1 of chapter 64D of the General Laws

131 SECTION 11. Notwithstanding any general or special law to the contrary, any funds,
132 including but not limited to county correctional funds and other sources of income and revenue,
133 to the credit of the office of transferred sheriff as of June 30, 2009, shall be paid to the state
134 treasurer, but the county treasurer may pay appropriate fiscal year 2009 sheriff's department
135 obligations after June 30, 2009. Payment of obligations to be charged to the sheriff's fiscal year
136 2009 budget as approved by the county government finance review board must be within that
137 budget or otherwise be approved by the secretary of administration and finance.

138 SECTION 12. (a) Notwithstanding any general or special law to the contrary, and except
139 for all counties the governments of which have been abolished by chapter 34B or other law,
140 revenues of the office of sheriff in Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth
141 and Suffolk counties for civil process, inmate telephone and commissary funds, shall remain
142 with the office of sheriff.

143 (b) In order to encourage innovation and enterprise, each sheriff's office shall annually
144 confer with the house and senate committees on ways and means regarding each sheriff's efforts
145 to maximize and maintain grants, dedicated revenue accounts, revolving accounts, fee for
146 service accounts and fees and payments from the federal, state and local governments and other
147 such accounts and regarding which revenues shall remain with the sheriff's office.

148 (c) Any sheriff who has developed a revenue source derived apart from the state treasury
149 may retain that funding to address the needs of the citizens within that county.

150 (d) Any un-encumbered carry-forward deeds excise or other funds to the credit of the
151 sheriff as of June 30, 2009 shall be paid to the state treasurer.

152 SECTION 13 (a) All employees of the office of transferred sheriff, including those who
153 on the effective date of this act hold permanent appointment in positions classified under
154 chapter 31 of the General Laws or have tenure in their positions by reason of section 9A of
155 chapter 30 of the General Laws or do not hold such tenure, are hereby transferred to that
156 transferred sheriff as employees of the commonwealth, without interruption of service within
157 the meaning of said section 9A or said chapter 31, and without reduction in compensation or
158 salary grade.

159 (b) Notwithstanding any general or special law to the contrary, employees of the office
160 of a transferred sheriff shall continue to retain their right to collectively bargain pursuant to
161 chapter 150E of the General Laws, and shall be considered sheriff's office employees for the
162 purposes of said chapter 150E.

163 (c) All petitions, requests, investigations and other proceedings duly brought before the
164 office of a transferred sheriff, or duly begun by that sheriff and pending on the effective date of

165 this act, shall continue unabated and remain in force, but shall be assumed and completed by the
166 office of a transferred sheriff.

167 (d) All orders, rules and regulations duly made and all approvals duly granted by a
168 transferred sheriff which are in force on the effective date of this act, shall continue in force and
169 shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with
170 law by that sheriff.

171 (e) All books, papers, records, documents, and equipment, which on the effective date of
172 this act are in the custody of a transferred sheriff shall be transferred to that sheriff upon the
173 effective date of this act.

174 (f) All duly existing contracts, leases and obligations of a transferred sheriff shall
175 continue in effect. An existing right or remedy of any character shall not be lost or affected by
176 this act.

177 SECTION 14. The rights of all employees of each office of a transferred sheriff shall
178 continue to be governed by the terms of collective bargaining agreements, as applicable. If any
179 collective bargaining agreement has expired on the transfer date, the terms and conditions of
180 any such agreement shall remain in effect until a successor agreement is ratified and funded.

181 SECTION 15. Notwithstanding any general or special law to the contrary, a transferred
182 sheriff in office on the effective date of this act shall become an employee of the commonwealth
183 with salary to be paid by the commonwealth. The sheriff shall remain an elected official under
184 section 159 of chapter 54 of the General Laws. The sheriff shall operate pursuant to chapter 37
185 of the General Laws. The sheriff shall retain administrative and operational control over the
186 office of the sheriff, the jail, the house of correction and any other occupied buildings controlled
187 by a transferred sheriff upon the effective date of this act. The sheriff and sheriff's office shall

188 retain and operate under all established common law power and authority as well as chapters
189 126 and 127 of the General Laws and any other relevant General Laws in effect before the
190 transfer.

191 SECTION 16. Notwithstanding any general or special law to the contrary, a transferred
192 sheriff shall be considered an "employer" as that term is defined in section 1 of chapter 150E of
193 the General Laws for the purposes of said chapter 150E. The sheriff shall also have power and
194 authority as employer in all matters, including but not limited to hiring, firing, promotion,
195 discipline, work-related injuries and internal organization of the department.

196 SECTION 17. (a) Notwithstanding any general or special law or rule or regulation to the
197 contrary, the sheriff, special sheriff, deputies, jailers, superintendents, deputy superintendents,
198 assistant deputy superintendants, keepers, officers, assistants and other employees of the office
199 of a transferred sheriff, employed on the effective date of this act in the discharge of their
200 responsibilities set forth in section 24 of chapter 37 and section 16 of chapter 126 of the General
201 Laws, shall be transferred to the commonwealth with no impairment of employment rights held
202 on the effective date of this act, without interruption of service, without impairment of
203 seniority, retirement or other rights of employees, without reduction in compensation or salary
204 grade and without change in union representation. Any collective bargaining agreement in effect
205 on the date of this act shall continue in effect and the terms and conditions of employment
206 therein shall continue as if the employees had not been so transferred. Nothing in this section
207 shall be construed to confer upon any employee any right not held on the effective date of this
208 act, or to prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge
209 layoff or abolition of position not prohibited before that date. These employees shall not be
210 considered new employees for salary, wage, tax, health insurance, Medicare or any other federal

211 or state purposes, but shall retain their existing start and hiring date, seniority and any other
212 relevant employment status through the transfer.

213 (b) All demands, notices, citations, writs, precepts and all other notices given by the
214 sheriff, special sheriff, deputies, jailers, superintendents, deputy superintendents, assistant
215 deputy superintendents, keepers, officers, assistants or other employees of the office of a
216 transferred sheriff, as the case may be, on or before the effective date of this act shall be valid
217 and effective for all purposes unless otherwise revoked, suspended, rescinded, canceled or
218 terminated.

219 (c) Any enforcement activity imposed by the sheriff, special sheriff, any deputies,
220 jailers, superintendents, deputy superintendents, assistant deputy superintendents, keepers,
221 officers, assistants or other employees of the office of a transferred sheriff, before the effective
222 date of this act, shall be valid, effective and continuing in force according to the terms thereof
223 for all purpose unless superseded, revised, rescinded or canceled.

224 (d) All petitions, hearings appeals, suits and other proceedings duly brought against, and
225 all petitions, hearings, appeals, suits, prosecutions and other legal proceedings begun by the
226 sheriff, special sheriff, deputies, jailers, superintendents, deputy superintendents, assistant
227 deputy superintendents, keepers, officers, assistants or the employees of the office of a
228 transferred sheriff, as the case may be, which are pending on the effective date of this act shall
229 continue unabated and remain in force notwithstanding the passage of this act.

230 (e) All records maintained by the sheriff, special sheriff, deputies, jailers,
231 superintendents, deputy superintendents, assistant deputy superintendents, keepers, officers,
232 assistants and other employees of the office of a transferred sheriff on the effective date of this
233 act shall continue to enjoy the same status in any court or administrative proceeding, whether

234 pending on that date or commenced thereafter, as they would have enjoyed in the absence of the
235 passage of this act.

236 SECTION 18. All officers and employees of the office of a transferred sheriff
237 transferred to the service of the commonwealth shall be transferred with no impairment of
238 seniority, retirement or other rights of employees, without reduction in compensation or salary
239 grade and without change in union representation, except as otherwise provided in this act. Any
240 collective bargaining agreement in effect for transferred employees on the effective date of this
241 act shall continue as if the employees had not been so transferred, until the expiration date of the
242 collective bargaining agreement. Nothing in this section shall be construed to confer upon any
243 employee any right not held on the effective date of this act, or to prohibit any reduction of
244 salary or grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not
245 prohibited before that date.

246 SECTION 19. (a) Notwithstanding any general or special law to the contrary, employees
247 or retired employees of the office of a transferred sheriff and the surviving spouses of retired
248 employees of the office of a transferred sheriff who are eligible for group insurance coverage as
249 provided under chapter 32B of the General Laws or who are insured under said chapter 32B,
250 shall have that eligibility and coverage transferred to the jurisdiction of the group insurance
251 commission effective 4 months after the effective date of this act, and those employees shall
252 cease to be eligible or insured under said chapter 32B. These employees shall not be considered
253 to be new employees. The group insurance commission shall provide uninterrupted coverage for
254 group life and accidental death and dismemberment insurance and group general or blanket
255 insurance providing hospital, surgical, medical, dental and other health insurance benefits to the
256 extent authorized under chapter 32A of the General Laws. Employees who were covered by a

257 collective bargaining agreement on the effective date of this act shall continue to receive the
258 group insurance benefits required by their respective collective bargaining agreements until a
259 successor agreement is ratified and funded.

260 (b) The human resources division of the executive office for administration and finance
261 shall assume the obligations of the office of a transferred sheriff to employees who become state
262 employees and who are covered under a health and welfare trust fund agreement established
263 under section 15 of chapter 32B of the General Laws pursuant to a collective bargaining
264 agreement until the expiration date of the collective bargaining agreement.(c) Any monies in a
265 claims trust fund established pursuant to section 3A of said chapter 32B that would otherwise
266 have been reserved for claims made by employees of a transferred sheriff are hereby transferred
267 to the group insurance commission as of the effective date of this act.

268 SECTION 20. Notwithstanding chapter 32 of the General Laws or any other general or
269 special laws to the contrary, the retirement system in the county of a transferred sheriff shall
270 continue pursuant to this section and shall be managed by the retirement board as provided in
271 this section beginning on the effective date of this act. Employees of a transferred sheriff who
272 retired on or before the effective date of this act shall be members of the county retirement
273 system, which shall pay the cost of benefits annually to such retired county employees and their
274 survivors. The retirement assets of the employees of transferred sheriffs who become state
275 employees pursuant to this act shall be transferred from said county retirement system to the
276 state retirement system, which shall thereafter be responsible for those employees, subject to the
277 laws applicable to employees whose transfer from one governmental unit to another results in
278 the transfer from one retirement system to another, except for paragraph (c) of subsection (8) of
279 section 3 of chapter 32 of the General Laws. All other provisions governing the retirement

280 systems of the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and
281 Suffolk shall remain in effect.

282 SECTION 21. County commissioners, county sheriffs, county treasurers, county
283 retirement systems, the State-Boston retirement system, and all executive branch agencies and
284 officers shall cooperate with the secretary of administration and finance in effecting the orderly
285 transfer of the county sheriffs to the commonwealth. The secretary may establish working
286 groups as considered appropriate to assist in the implementation of the transfer.

287 SECTION 22. There shall be established a special commission to consist of 8 members,
288 1 of whom shall be a member of the Massachusetts Sheriffs' Association, 1 of whom shall be a
289 county commissioner of a county of a transferred sheriff, 2 of whom shall be appointed by the
290 speaker of the house of representatives, 2 of whom shall be appointed by the president of the
291 senate and 2 of whom shall be appointed by the governor for the purpose of making an
292 investigation and study relative to the reorganization or consolidation of sheriffs' offices, to
293 make formal recommendations regarding such reorganization or consolidation and to
294 recommend legislation, if any, to effectuate such recommendations relating to the
295 reorganization, consolidation, operation, administration, regulation, governance and finances of
296 sheriffs' offices. The chairman of the commission shall be selected by its members. Section 2A
297 of chapter 4 of the General Laws shall not apply to said commission. So long as a member of
298 the commission discloses, in writing, to the state ethics commission any financial interest as
299 described in section 6, 7, or 23 of chapter 268A of the general laws which may affect the
300 members work on the commission, the member shall not be deemed to have violated said
301 section 6, 7, or 23 of said chapter 268A. 4 members of the commission shall constitute a
302 quorum and a majority of all members present and voting shall be required for any action voted

303 by the commission including, but not limited to, voting on formal recommendations or
304 recommended legislation.

305 The commission, as part of its review, analysis and study, in making such
306 recommendations regarding the reorganization, consolidation, operation, administration,
307 regulation, governance and finances of sheriffs' offices, shall focus on and consider the
308 following issues, proposals and impacts:

309 (1) the possible consolidation, elimination or realignment of certain sheriffs' offices and
310 the potential cost savings and other efficiencies that may be achieved by eliminating,
311 consolidating and realigning certain sheriffs' offices to achieve pay parity;

312 (2) any constitutional, statutory or regulatory changes or amendments that may be
313 required in order to effectuate any such consolidation or reorganization;

314 (3) the reallocation of duties and responsibilities of sheriffs' office as a consequence of
315 any such consolidation or reorganization; and

316 (4) the consideration of any other issues, studies, proposals or impacts that, in the
317 judgment of the commission, may be relevant, pertinent or material to the study, analysis and
318 review of the commission.

319 The commission shall submit a copy of a final report of its findings resulting from its
320 study, review, analysis and consideration, including legislative recommendations, if any, to the
321 governor, president of the senate, speaker of the house of representatives, the chairs of the house
322 and senate committees on ways and means and the chairs of the joint committee on state
323 administration and regulatory oversight and shall file the report with the clerk of the house of
324 representatives on or before December 31, 2009. Any department, division, commission, public
325 body, authority, board, bureau or agency of the commonwealth shall cooperate with the

326 commission for the purpose of providing information or professional expertise and skill relevant
327 to the responsibilities of the commission subject to considerations of privilege or the public
328 records law.

329 SECTION 23. This act shall take effect on July 1, 2009.